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June 7, 2002

VIA HAND DELIVERY AND E-MAIL

Mary L. Cottrell, Secretary  
Massachusetts Department of Telecommunications  
and Energy  
One South Station, Second Floor  
Boston, MA 02110

Re: D.T.E. 02-35, The Connecticut Light and Power Company

Dear Ms. Cottrell:

On behalf of our client, FPL Energy Seabrook, LLC ("FPLE Seabrook"), we hereby submit these comments in support of Connecticut Light and Power Company's Petition for Findings Under Section 32(c) of the Public Utility Holding Company Act of 1935 ("CL&P Petition"). The CL&P Petition was filed with the Department on May 17, 2002 in connection with the sale by Connecticut Light and Power ("CL&P") of its 4.05985 percent interest in Seabrook Nuclear Station in New Hampshire ("Seabrook Station"). FPLE Seabrook offers these comments on the assumption that the Department will rule on the CL&P Petition on the basis of the Petition and written comments only.<sup>1</sup>

**I. Background and Procedural History**

FPLE Seabrook is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in New Hampshire. FPLE Seabrook is a wholly-owned, special-purpose indirect subsidiary of FPL Energy LLC ("FPL Energy"), the independent power producer subsidiary of FPL Group, Inc. ("FPL Group"). FPL Group is a public utility holding company incorporated in 1984 under the laws of the State of Florida. Through its

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<sup>1</sup> As discussed below, should the Department believe that something more than "notice and comment" review is needed to act on the CL&P Petition, FPLE Seabrook hereby petitions in the alternative for leave to intervene in D.T.E. 02-35.

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affiliates, FPL Group has over 23,000 MW of generation capacity in operation in the United States. FPLE Seabrook's address is c/o FPL Group, Inc., 700 Universe Boulevard, Juno Beach, FL 33408.

As a result of a competitive auction process conducted by J.P. Morgan Securities Inc., under the supervision of units of the Connecticut Department of Public Utility Control and the New Hampshire Public Utilities Commission, FPLE Seabrook entered into a Purchase and Sale Agreement for the purchase of CL&P's interest in Seabrook Station. On May 17, 2002, CL&P filed a petition requesting that the Department make specific findings under § 32(c) of the Public Utility Holding Company Act of 1935 ("PUHCA") that allowing the divested generating assets to become "eligible facilities" as defined in § 32(c) (15 U.S.C. § 79z-5a(a)(2)) (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law.

**II. The Department should make a specific determination that allowing Seabrook Station to become an Eligible Facility will (1) Benefit Consumers, (2) is in the Public Interest, and (3) does not violate State Law.**

Section 32(c) of PUHCA, in relevant part, states:

State consent for existing rate-based facilities. If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of the date of enactment of this section, in order for the facility to be considered an eligible facility, every State commission having jurisdiction over any such rate or charge must make a specific determination that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law; Provided, That in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company:

(A) such determination with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company; . . .

Because the Department has jurisdiction over the retail rates of Western Massachusetts Electric Company ("WMECO"), which along with CL&P is an affiliate of a registered holding company under PUHCA, the Department must make the requested specific determinations in order for FPLE Seabrook to obtain Exempt Wholesale Generator ("EWG") status from the Federal Energy Regulatory Commission ("FERC"). Consistent with Department precedent, and

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based on the facts associated with the divestiture of Seabrook Station, the Department should make the requested determination that allowing Seabrook Station to be an “eligible facility” will benefit customers, is in the public interest and does not violate state law.

The sale of CL&P’s share of Seabrook Station was accomplished through a competitive auction that ensured complete, uninhibited, non-discriminatory access to all data and information by all participants. Chapter 164 of the Acts of 1997 (the “Act”) states that the results of a competitive auction that ensures complete, uninhibited, non-discriminatory access to all data by all interested parties seeking to participate in the auction are deemed to satisfy the Act’s requirement that a company demonstrate to the Department that the sale process maximizes the value of the generation facilities being sold. See Cambridge Electric Light Company, D.T.E. 98-78/83, at 3-4 (1998), citing G.L. c. 164, § 1A(b)(1). As a result, the sale of Seabrook Station will maximize the mitigation of generation-related stranded costs that ratepayers would otherwise pay as transition costs, thereby providing a direct benefit to those ratepayers.

The sale of CL&P’s share of Seabrook Station is in the public interest and is consistent with state law because it directly reflects the policies established by the Department in D.P.U./D.T.E. 96-100 and by the Legislature in the Act. The Department found that an expedient and orderly transition from regulation to customer choice, and full and fair competition in the generation sector, would best serve the interests of ratepayers. D.P.U./D.T.E. 96-100, at 8 (1998). The divestiture of Seabrook Station will further these goals, leading to greater competition in the generation market and additional opportunities for customer choice.

The divestiture of Seabrook Station is also consistent with the requirement in the Act that electric utility companies mitigate stranded costs. Under the Act, mitigation includes the sale of generation facilities; any electric company wishing to recover transition costs is required to mitigate. See G.L. c.164, §§ 1, 1G(d)(1). Accordingly, the sale of Seabrook Station is consistent with the divestiture of generating assets to competitive entities and thereby furthers the policy goals of the Commonwealth. In addition, FPLE Seabrook must obtain the determination of EWG status under Section 32(c) as a condition to closing CL&P’s sale to FPLE Seabrook. Without such a finding, ratepayers of the current owners of Seabrook will not benefit from the sale.

The determination sought by CL&P from the Department is identical to those sought and obtained by CL&P in D.T.E. 99-80 (November 26, 1999) (sale of certain CL&P assets to NRG Energy, Inc. and Northeast Generation Company) and in D.T.E. 00-69 (December 21, 2000) (sale of CL&P assets in Millstone 1, 2, and 3 to Dominion Nuclear Connecticut, Inc.). In its final order in D.T.E. 00-69, the Department found that the sale by CL&P of its interest in the

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Millstone units would benefit consumers and the public interest by furthering the Act's goal of developing a competitive wholesale generation market.

The record indicates that a designation of the assets as EWGs would contribute to the development of a competitive wholesale generation market and is, therefore, in the public interest ... [B]ecause competing wholesale generators will be an integral part of the competitive generation industry that the Act was designed to enable, the Department finds that the designation of the Petitioners assets as an EWG does not violate state law, but rather, furthers the objectives of the state law.

D.T.E. 00-69 at 4. The Department has made similar findings in several other divestiture-related proceedings involving requests for findings under § 32(c). See Western Massachusetts Electric Company, D.T.E. 99-74, at 12-14 (2000); Western Massachusetts Electric Company, D.T.E. 99-29, at 13-15 (1999); Fitchburg Gas and Electric Light Company, D.T.E. 98-121, at 11-13 (1999); Connecticut Light & Power Company, D.T.E. 99-80, at 5-7 (1999); Eastern Edison Company and Montaup Electric Company, D.T.E. 99-9, at 19-20 (1999); Cambridge Electric Light Company/Commonwealth Electric Company and Canal Electric Company, D.T.E. 98-78/83, at 12-15 (1998).

Given the Department's consistent approach to requests for findings under § 32(c) and the fact that the divestiture transaction as a whole will be the subject of hearings in two other D.T.E. proceedings (New England Power, D.T.E. 02-33, and Commonwealth Electric et al., D.T.E. 02-34), FPLE Seabrook agrees with CL&P that the Department should act on the CL&P Petition on a notice-and-comment basis. FPLE Seabrook also requests that the Department act on and approve the CL&P Petition by August 30, 2002 (and no later than the date it acts on the two requests for approval pending in D.T.E. 02-33 and 02-34). The Department's approval in D.T.E. 02-33, 02-34 and 02-35, as well as that of the other state commissions considering requests for § 32(c) findings for this transaction, must be issued before FPLE Seabrook can file its FERC application for EWG status. Because the FERC process is likely to take up to 60 days, and because the parties are targeting a closing in late November 2002, a decision from the Department is needed by August 30, 2002.

### **III. Alternative Petition To Intervene**

Although FPLE Seabrook joins CL&P's request that the Department act on the CL&P petition on a notice and comment basis, should the Department proceed with more formal consideration of the CL&P Petition, FPLE Seabrook hereby petitions in the alternative to

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intervene pursuant to c.30A, § 10 and 220 CMR § 1.03. FPLE Seabrook's legal rights, duties and privileges will be substantially and specifically affected by the Department's action on the CL&P Petition because, as explained above, such action will directly impact the extent and value of FPLE Seabrook's ultimate ownership interest in Seabrook Station.

### **Conclusion**

For all of the reasons stated above, FPLE Seabrook supports CL&P's request that the Department make the specific determinations that allowing Seabrook to become an eligible facility as defined in § 32(c) (15 U.S.C. § 79z-5a(a)(2)) (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law.

Cordially,

Michael D. Vhay

cc: Mitchell S. Ross, Esq.  
Jesse S. Reyes, Esq.  
E. Randolph Tucker, Esq.  
Sean K. McElligott, Esq.  
Stephen Klionsky, Esq.